SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 609

HARTSVILLE OIL MILL, *Appellant*,

vs.

THE UNITED STATES, *Appellee*.

APPEAL FROM THE COURT OF CLAIMS

REPLY BRIEF OF APPELLANT

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Without attempting to discuss in detail the brief of the United States, and without needless repetition, the appellant deems it proper to call attention to the following:

I

It is claimed in the brief for the government that the arguments for appellant are based upon facts not contained in the findings of the Court of Claims, and particular attention is called to the claim that there is nothing in the findings which supports appellant's view regarding the situation in the industry at the time the ultimatum was submitted to the linter producers.

This situation was fully alleged and set forth in the petition (R. 15-16-17) and evidence in substantiation thereof was before the Court, and the Court made no finding contrary to or limiting such facts. It is the position of the appellant that the matters thus alleged in the petition were such as the Court could take judicial notice of, and it is manifest from the opinion of the Court of Claims that such notice was taken. The facts so alleged find support also in public documents of the government, and we respectfully embody herein excerpts which are pertinent:

> "Government control of the linter crop. The immediate need then, was the stimulation of linter output, and with this in view, cottonseed crushers were required to increase the cut of linters. After May 2, 1918, at the order of the War Industries Board, the oil mills were required to 'cut clean mill run linters known as munition type' exclusively. Moreover, crushers were compelled to cut a minimum of 145 pounds of linters per ton of seed crushed. And for the period May 2, 1918, to July 31, 1919, these linters were to be sold to no one other than the United States government, which agreed to take over the supply produced from the 1918-1919 crop at a price of $4.67 per hundredweight f. o. b. points of production." (History of Prices During the War, W. I. B. Price Bulletin No. 1, Government Printing Office, 1919, page 306.)

In the same volume at page 112, after setting forth other facts in connection with the "control over 1918 crop" it is said:

> "The War Industries Board had already fixed the price of linters; and thus there was inaugu-

rated a complete system of price fixing extending from the farmer who raised cottonseed to the retailer who disposed of the products.

"The post-armistice situation. With the signing of the armistice arose the problem of disposing of cottonseed products at the agreed prices. Not only had large amounts of seed and oil accumulated in certain localities, but there was also a large amount of cheaper foreign oil competing in the American market with domestic cottonseed oil, and underselling it.

"Moreover, there was the linter difficulty with the War Industries Board which threatened seriously the linter market. The industry was in a precarious condition, and it seemed as if there would be little relief afforded from any quarter, when on February 11, 1919, the Food Administration called together representatives of all branches of the industry with a view to finding a solution. It was the opinion of these representatives that the industry would be greatly aided by the stimulation of exports, and they further recommended that—

> 'Such orders as were received for lard substitutes through the Food Administration or by the manufacturers should be manufactured from domestic cottonseed oil; that crushers should use their best efforts to purchase seed from localities where the heaviest congestion of seed existed; that refiners should purchase crude oil from crude mills where the heaviest congestion existed. They further unanimously agreed that the stabilization plan of the Food Administration should be car-

> ried out to its completion, notwithstanding the fact that the armistice had changed the situation, and there was a fear of greater disaster to the industry if the Food Administration should cease its efforts to maintain the price while this congested condition existed.' "

Further, at page 113, it is said:

> "By the end of May virtually all of the cotton seed of the 1918-1919 crop had been disposed of at the stabilized price. The major part of the manufactured products had also been marketed on the basis of the agreed prices, and stocks were about equal to the average for May of previous years. It was evident, therefore, that control of the cottonseed industry was no longer necessary, and on May 31, 1919, 'all price regulations and agreements regarding cotton seed and products manufactured therefrom, including lard substitutes,' were withdrawn."

An interesting and full statement of these facts will also be found in the Decisions of the Board of Contract Adjustment of the War Department, which is the decision referred to in Finding of Fact XXI, R. 68, when this situation was before that Board, commencing at page 314, of volume 2. Quoting from page 344, the Board there said:

> "9. For the reasons above set out, and after careful examination of the great mass of testimony and evidence in these cases, this Board is compelled to conclude, that by a great preponderance of evidence, the Ordnance Officers, by

their statements and conduct on the 30th of December, gave sufficient cause for justifying the belief on the part of the linters committee that if they did not accept the offer made, and later embraced in the modification of Seller's Contract of Sale, by 7:00 o'clock that night, then the government intended to breach the contract altogether and to decline to accept any linters whatever, and that claimants would be forced to go to the Court of Claims to have their rights adjusted.

"This alternative was presented to claimants with the full knowledge also of the Ordnance Officers that it was the belief and the fear of claimants that if the contracts were breached altogether and the matter placed in litigation the stabilization scheme of prices, upon which the claimants had made large commitments in seeds purchased, and upon the faith of which the claimants were under moral obligation to pay for cotton seeds still in the hands of the farmers at the stabilized price, would fail, resulting in irreparable loss to the cotton seed industry, bankers, and others associated with it. It is apparent, also, that claimants accepted the offer made by the government as the best means, in their judgment, of preventing the disruption of the stabilization scheme; and that claimants agreed to the modification offer to avoid two results:

(a) The litigation of their agreements in the Court of Claims; and

(b) The probability of the disruption of the stabilization scheme for the remainder of of the season."

The Court of Claims did set forth in its findings the

tremendous amount of the product which was involved in the control of the War Industries Board and the Food Administration, and did set forth in a general way the nature of this control; and did indicate in such findings the concern that the farmers and bankers, in addition to the cotton seed millers, had in this situation when it was presented to the linter committee in Washington (Finding XIX, R. 60). The fact that the Court took notice of this situation is further evidence in its opinion (R. 65) where it is stated that claimant was at the time in "fear of financial disaster."

2.

It is said on page 18 of the brief for the United States that the price to be paid for linters under the modified contract was greater than the price named in the original contract, which constituted a consideration for the modification of Seller's Contract of Sale. This is a misunderstanding of an essential fact in the case. The basic price in the two contracts was exactly the same, to-wit, $6.77 for the linters to be taken from each ton of cotton seed crushed. While the price per pound is different, it must be noted that under the original contract the cut was to be not less than 145 pounds from each ton of seed, whereas in the modified contract it was to be not more than 75 pounds from each ton of seed.

The munition type of linters called for under the original contract had no value commercially, and it was at the request of the War Industries Board on November 28, 1918, that the cut was reduced to a maximum of 75 pounds per ton of seed, as stated by that Board, "to avoid an obvious economic waste." (R. 59)

3.

There is a further misapprehension of the facts on

page 19 of the brief for the government, in the statement that the so-called modified contract was an agreement to accept "a much greater quantity of linters" than the government would have been required to take under a cancellation according to the terms of the original contract. This assertion is without basis in the findings of fact or in the evidence.

The cancellation clause could not be invoked at the time referred to because the war had not been terminated, as was then maintained by this claimant and which now appears to be conceded by counsel for the United States.

But if the cancellation clause had been taken advantage of in the proper manner and at the proper time, the government would have been obligated to accept deliveries for one month after the cancellation and to hold the seller harmless from all loss caused by such cancellation such as firm commitments for material purchased to fulfill this contract (R. 45), in addition to lint on hand at date of such cancellation.

4.

It is also stated on page 20 of the brief for the government that the linters manufactured up to July 31, 1919, were accepted by the government, "almost in their entirety." This statement finds no support in the findings in this case, but on the other hand in Finding XVIII (R. 60) the final offer of the government to the linter committee was, that it "would take only a part of the linters thereafter produced by the crushers from January 1, 1919, to July 31, 1919, not to exceed 150,000 bales. * * *"

5.

On page 21 of the same brief emphasis is laid upon the following statement:

> "Furthermore, it is to be noted that this appellant made no protest and no attempt to repudiate the settlement agreement of December 31 * * * until on June 29, the last day before the expiration of the period within which claim could be filed under the Dent Act, the appellant filed a claim."

This is the keynote of the argument of appellee and is in direct conflict with the express statement of the Court of Claims, that the agreement by which the modified contract was accepted, "was entered into under protest," and the finding (Finding XIX) that at the very time of the conferences in Washington, when the ultimatum was put up to the mills and the appellant, the mills and this appellant protested and preserved their protest. Finding XXI to which counsel for the government refers, obviously relates to the mere affixing of signatures much later and cannot be interpreted in any other way, for otherwise it would be directly in conflict with the specific finding (Finding XIX, R. 60) on the subject of protest, and would leave wholly unsupported the opinion of the Court of Claims on the subject where it is said in express words:

> "It is true that the plaintiff protested against signing the contract, and asserted that it signed it only because it was under the pressure of financial necessity. It signed because it believed that the terms proposed by the government were the best it could get, and it required money for the conduct of its business, and feared financial disaster should it refuse to sign." (R. 65.)

On page 22 it is contended that the record does not contain anything from which a measure of damages can be calculated. This argument requires no further attention than to say that in Finding XXII (R. 63) the Court specifically found what the measure of damages should be if the plaintiff in the Court below was entitled to recover, giving details of the amount due for linters which were not taken up by the government and making the proper credit for linters which were disposed of to others than the government.

In this connection it is stated that (page 23) "On May 1, 1919, the market value was higher than $.068, which was higher than the original contract price of $.0467." This date while correctly taken from the petition, was obviously a typographical error, but one which is easily corrected by reference to the entire paragraph in which it occurs (R. 7). Examination of the record shows that the date when the market price of linters was specified was prior to the time the government commandeered the entire output, and required all production to be furnished to the government. This was of course May 1, 1918, and not 1919.

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